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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,025	07/31/2001	Neill B. Walsdorf SR.	HO-P02490US0	3707
26271	7590	02/17/2004	EXAMINER	
FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095			CHOI, FRANK I	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/919,025	Applicant(s) WALSDORF ET AL.	
	Examiner Frank I Choi	Art Unit 1616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.


Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____




JOHN PAK
PRIMARY EXAMINER
GROUP 1200

Continuation of 2. NOTE: The proposed amendment adds a limitation to the method claims excluding certain calcium salts in amounts sufficient to neutralize gastric acidity and a limitation which amends the composition to claim a single dose which was not previously set forth in the claims and, thus, would require further consideration and/or search. .

Continuation of 5. does NOT place the application in condition for allowance because: for the reasons set forth in the prior Office Action and the further reasons below. Examiner is unsure why Applicant argues that CN 1210695 does not suggest all the limitations of claim 1 the 102/103 rejection as claim 1 was not rejected in said rejection. The limitation "single dose" still does not define a specific quantity, as such, Applicant has not shown that the prior art composition is excluded by said limitation. With respect to the 103 rejection over RO 87637 in view of CN 1210695 and Remington's, it is well within the skill of one ordinary skill in the art to prepare compositions containing single or several doses which can then be divided either by the manufacturer, packager or endpoint user to a single dose (See Remington's). The unsupported conclusion that the combined references do not teach calcium glutarate compositions excluding non-glutarate calcium salts in amounts sufficient to neutralize gastric acidity is insufficient to overcome the rejection herein. The limitation basically defines an unspecified maximum amount of a non-glutarate calcium salt, as such, in order to show that the limitation avoids the prior art the Applicant must show that the amounts described in the prior art would neutralize gastric acidity. Examiner notes that arguments of counsel do not constitute evidence. In re Huang, 40 USPQ2d 1685, 1689 (Fed. Cir. 1996); In re De Blauwe, 222 USPQ 191 196 (Fed. Cir. 1984).